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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,243	09/26/2001	Curt R. Eyster	LIFE063	8576

7590 02/23/2005

LifeScan, Inc.
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EXAMINER

ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/963,243

Applicant(s)

EYSTER ET AL.

Examiner

Lyle A Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2 and 10 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hirayama et al.

See the appropriate paragraph of the 6/15/04 Office action.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirayama et al.

See the appropriate paragraph of the 6/15/04 Office action.

Claims 3-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirayama et al in view of Phillips et al. (USP 5,843,692).

See the appropriate paragraph of the 6/15/04 Office action.

Response to Arguments

Applicant's arguments filed 12/2/04 have been fully considered but they are not persuasive.

Applicants state Hirayama et al. fails to teach a sample pad that "underlies and adjoins" the sample receiving aperture. The Office has read "underlies" as meaning --beneath-- and "adjoin" as meaning --next to--. The Office maintains Hirayama et al.

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teaches reagent pad(3) as being both beneath and next to the aperture(51) and has been properly read on the instant claims.

Applicants state Hirayama et al. fail to teach the sample receiving area and a surrounding portion of the support as corresponding to an optical viewing area. These remarks are not commensurate in scope with the pending claims that only require "... at least a portion of the bottom surface ... and the portion ... corresponding to an optical viewing area...". Hirayama et al. clearly teaches a portion of the bottom surface as the optical viewing area and has been properly applied to the pending claims.

Applicants state Hirayama et al. teach a reagent layer that is adjacent to a sample holding room and the sample supply hole(51). As discussed above, the Office maintains Hirayama et al. teach the reagent layer(3) is adjacent to hole(51) and has been properly read on the pending claims.

Applicants remarks concerning the 35 USC 102(b) rejections over Phillips et al. were convincing and these rejections have been vacated.

Applicants traverse the 35 USC 103 rejection of claims 3 and 11 on the basis the 35 USC 102 rejection is improper and thus these claims also define over the art. The Office maintains the 35 USC 102 rejections are proper and so are the 35 USC 103 rejections for the same reasons.

Applicants traverse the 35 USC 103 rejection of the balance of the claims over Hirayama et al. in view of Phillips et al. Applicants states the claims require a reagent pad to underlie and adjoin the aperture. The Office maintains, as discussed above, Hirayama et al. meets this limitation.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lyle A Alexander
Primary Examiner
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A handwritten signature in black ink, appearing to be 'Lyle A. Alexander', written in a cursive style.